

Painless Problem Solving: The Commission's Informal Dispute Resolution System

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Dispute resolution techniques usually fall into two distinct categories: formal and informal. These terms refer to the degree of structure involved in the process. Formal techniques generally entail a relatively high degree of structure following set patterns varying little from case to case. Trial-like hearings and civil litigation typify formal dispute resolution.

Adjudication and peer review are the two primary means of formal dispute resolution under the Virginia Workers' Compensation Act. Adjudication, discussed in detail in the preceding article, is the process by which a deputy commissioner issues a formal written opinion after taking evidence. The deputy may take evidence at a trial-like hearing or by written submissions made by the parties. The deputy commissioner issues an opinion in which he or she sets out the decision and supporting rationale. These decisions may be appealed. The adjudication process is initiated whenever a party or medical provider files an application describing a contested issue.

Where there is a dispute about the amount of reimbursement due a provider, the provider may request peer review, a formal dispute resolution process specifically intended for such matters. The reimbursement dispute is referred to a panel of physicians practicing in the locality where the treatment at issue was rendered. The panel reviews the charge and decides the appropriateness of the amount of reimbursement made by the insurance carrier. The panel may issue a decision setting out its determination and supporting rationale. The Commission may review panel decisions upon application of a party or a provider. A provider or party may request peer review by filing an application available from the Commission. Peer review and adjudication are mutually exclusive remedies; the party filing the claim must elect one of the two.

Recently, in response to the soaring costs associated with litigation, disputants have increasingly relied on less structured “informal” means of resolving conflict. These techniques rely on conciliatory communication efforts often facilitated by a neutral third party. Mediation is an example. The Commission has initiated a multi-component informal dispute resolution system that includes mediation services.

The Commission’s informal dispute resolution and mediation systems are voluntary. The services must be requested by a party and agreed to by all parties. These programs were designed to achieve three primary goals:

- Increasing customer satisfaction by expediently resolving contested issues with solutions that are pleasing to all parties;
- Alleviating docket congestion by resolving appropriate cases early in the adjudication process; and
- Improving communication among the parties and the Commission.

The Commission’s informal dispute resolution and mediation systems have proved highly effective in meeting the needs of parties and medical providers. In a majority of cases, the need for adjudication is eliminated or there is a dramatic streamlining of issues.

The Commission’s informal dispute resolution systems are operated by the Commission’s Ombudsman Office. This office, created in October 1999, works with the parties using a number of different strategies to help them informally resolve their disputes

Frequently, the ombudsman’s first encounter with a particular dispute is through a request for mediation. The ombudsman attempts to work with the parties to resolve the dispute throughout the process of setting up the mediation. This may consist of something as simple as facilitating an exchange of information. Many contested issues are resolved in this way before the mediation is even scheduled. The result is a synergistic joining of services that has proved highly effective in early resolution of disputes.

If the Ombudsman's office is unable to resolve the dispute, the matter may be scheduled for mediation. All parties must consent to mediation before it can be scheduled. At the mediation, one of the Commission's trained neutral facilitators meets with the parties either in person or by telephone. The mediator works with the parties to design solutions to contested issues. The parties then create an agreement incorporating the solutions. This voluntary resolution eliminates the need the time and expense associated with a formal hearing.

The Commission continues to improve its informal dispute resolution programs. Our aim is to take a flexible approach to assure responsiveness to the changing needs of our customers. We look forward to further enhancements in our dispute resolution services in the near future.